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Paper No. 12

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APR 17 2003

OFFICE OF PETITIONS

ON PETITION

In re Application of
Grant
Application No. 09/804,484
Filed: March 12, 2001
Attorney Docket No. UP-10287
UF

This decision concerns the March 25, 2003 petition under 37 CFR 1.10(d), which is being properly treated as a petition under 37 CFR 1.10(c).

The petition is **DISMISSED**.

Petitioner requests a filing date of March 12, 2001 rather than the presently accorded filing date of March 13, 2001, on the basis that the application was deposited on March 12, 2001 in the U.S. Postal Service (USPS) "Express Mail Post Office to Addressee" ("Express Mail") service pursuant to the requirements of 37 CFR 1.10.

Under 37 CFR 1.10(c), any person filing correspondence that was received by the Office and delivered by the "Express Mail" service may petition the Commissioner if there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation. However, such a petition must include, *inter alia*, a true copy of the "Express Mail" mailing label indicating the "date-in" or other official notation by the USPS relied upon to show the date of deposit.¹ The instant petition lacks such a copy of "Express Mail" mailing label.

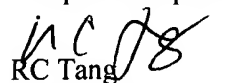
While the application transmittal, a copy of which is enclosed with the petition, bears an "Express Mail" mailing label number ET 321924891 US and contains a March 12, 2001 Certificate of Mailing by "Express Mail," such a Certificate of Mailing in accordance with 37 CFR 1.10, without more, merely indicates an intent to deposit the application papers in the USPS "Express Mail" service on that day.

Also supplied with the petition is a copy of a USPS correspondence to counsel, confirming that the mail deposited under the above "Express Mail" mailing label number "was delivered on March 13, 2001 at 10:41 AM . . ." Relying on this correspondence, the petition in essence argues that the application papers, if delivered to the PTO by the USPS on March 13, 2001 at 10:41am, must have been deposited in the "Express Mail" service the day before, i.e., on March 12, 2001. Unfortunately, the Office is not authorized, and has no basis, to extrapolate from the information provided by the USPS to reach such a conclusion.

In view of the above, the petition is dismissed. No petition fee is owed.

The application is being returned to Technology Center 1600 for examination of the amendment filed concurrently with the petition.

Telephone inquiries should be directed to the undersigned at (703) 308-0763.


RC Tang
Petitions Attorney
Office of Petitions

¹ See also MPEP section 513 (Aug. 2001).